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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: NOV 14 2011 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director), denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a university healthcare system. It seeks to permanently employ the beneficiary in the United States as a senior medical resident. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition is November 30, 2007, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

The director denied the petition on October 9, 2008. The decision concludes that the beneficiary does not possess an advanced degree. The AAO will also consider whether the position offered to the beneficiary constitutes permanent employment, and whether the petitioner currently intends to employ the beneficiary.[1]

The record shows that the appeal is properly filed, timely, and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d at 145. The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[2]

Section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or aliens of exceptional ability, whose services are sought by an employer in the United States.[3]

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[1] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

[2] The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

[3] There is no evidence in the record that the beneficiary possesses exceptional ability in the sciences, arts or business. Accordingly, consideration of the petition will be limited to whether the beneficiary is eligible for classification as a member of the professions holding an advanced degree.

In order for the petition to be approved, the petitioner must establish that the beneficiary is a member of the professions holding an advanced degree. 8 C.F.R. § 204.5(k)(3). To show that the beneficiary holds an advanced degree, the petition must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
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> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

8 C.F.R. § 204.5(k)(3)(i).

Part J of ETA Form 9089, signed by the beneficiary under penalty of perjury, states that the beneficiary obtained a medical degree in 2000 from Osmania Medical College NTR University of Health Sciences. The record contains the beneficiary's diploma for a Bachelor of Medicine and Bachelor of Surgery from NTR University of Health Sciences in Andhra Pradesh, India.[4] The record also contains a copy of the beneficiary's Educational Commission for Foreign Medical Graduates certificate, Score Reports demonstrating that the beneficiary passed Steps 1, 2 and 3 of the United States Medical Licensing Examination, a Graduate Medical Trainee medical license from the Commonwealth of Pennsylvania, and a letter from the petitioner confirming that the beneficiary completed twelve months of residency in the field of internal medicine.

On appeal, the petitioner submits an evaluation of the beneficiary's medical degree prepared by [redacted]. The evaluation concludes that the beneficiary's medical degree "is fully equivalent to a U.S. Doctor of Medicine (MD) degree, a U.S. first professional advanced (above baccalaureate) degree in medicine, from a regionally accredited college or university in the United States."[5]

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[4] The University of Health Sciences in Andhra Pradesh is a recognized state university by India's University Grants Commission. *See* http://www.ugc.ac.in/inside/State_University_August2011.pdf (last accessed September 2, 2011).

[5] U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; s*ee also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO also reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).[6] According to its website, www.aacrao.org, AACRAO "is a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." According to its registration page, EDGE is "a web-based resource for the evaluation of foreign educational credentials." http://aacraoedge.aacrao.org/register/index/php. Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.[7] If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.*

EDGE states that a Bachelor of Medicine/Bachelor of Surgery from India is awarded upon completion of four and a half to five and a half years of tertiary study plus one year of an internship, and "represents attainment of a level of education comparable to a first professional degree in medicine in the United States."[8]

In summary, the beneficiary possesses a Bachelor of Medicine and Bachelor of Surgery from the NTR University of Health Sciences in Andhra Pradesh, India; the university is a recognized state university by India's University Grants Commission; the record contains an academic credentials evaluation concluding that the beneficiary's degree is fully equivalent to a degree in medicine from an accredited university in the United States; and EDGE confirms that a Bachelor of Medicine/Bachelor of Surgery from India represents attainment of a level of education comparable to a degree in medicine in the United States.

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[6] In *Confluence Intern., Inc. v. Holder,* 2009 [redacted] the District Court in Minnesota determined that the AAO provided a rational explanation for its reliance on information provided by the AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano,* 2010 WL 3464314 (E.D.Mich. August 30, 2010), the Eastern District Court in Michigan found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.* 2010 [redacted] (E.D.Mich. August 20, 2010), the Eastern District Court in Michigan upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

[7] *See An Author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/publications/guide_to_creating_international_publications.pdf (last accessed September 2, 2011).

[8] *See* http://aacraoedge.aacrao.org/credentialsAdvice.php?countryId=99&credentialID=146 (last accessed September 2, 2011).

Therefore, it is concluded that the beneficiary possesses the foreign equivalent of a United States advanced degree, and the director's decision on this issue is withdrawn.

However, beyond the decision of the director, the petition cannot be approved because the position offered to the beneficiary does not constitute permanent employment, and because the petitioner has informed the AAO that it no longer intends to employ the beneficiary.

The offered position is "Senior Medical Resident." Medical residency, also known as graduate medical education, is a stage of medical education and training following the completion of a medical degree. Medical residents receive training and supervision by fully licensed physicians. The petitioner's medical residency program is accredited by the Accreditation Council for Graduate Medical Education (ACGME).[9] ACGME defines "residency" as a "program accredited to provide a structured educational experience designed to conform to the Program Requirements of a particular specialty."[10] Completion of an ACGME-accredited residency training program precedes full licensure and board certification.

According to the petitioner's website, its internal medicine residency is a three-year medical training program.[11] A "Senior Medical Resident" is a medical trainee who is in the second or third year of the residency program. Therefore, the offered position is limited to two years of graduate medical education in internal medicine.[12]

Although a medical residency is an integral part of a physician's education and training, it also involves employment. The hybrid nature of a medical residency is underscored by the fact that a medical resident is potentially eligible for classification as a nonimmigrant worker in an H-1B specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Act and as a J-1 exchange visitor for graduate medical education or training pursuant to section 101(a)(15)(J) of the Act.[13]

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[9] According to its website, ACGME is "responsible for the accreditation of post-MD medical training programs in the United States." http://www.acgme.org/acWebsite/home/home.asp (last accessed September 2, 2011).

[10] http://www.acgme.org/acWebsite/about/ab_ACGMEglossary.pdf (last accessed September 2, 2011).

[11] http://www.uphs.upenn.edu/medicine/education/resappinfo/program/index.html (last accessed September 2, 2011).

[12] There is no possibility for a meaningful extension of the offered medical residency, although an internal medicine resident may have the option for a fourth year of residency as a chief resident. http://www.acgme.org/acWebsite/about/ab_ACGMEglossary.pdf (last accessed September 2, 2011).

[13] The tension between the educational and employment nature of medical residency is further illustrated by the fact that medical residents and their employers have argued to the Internal Revenue Service that medical residents should be categorized as students as opposed to ordinary employees and therefore eligible for a FICA tax exception. *See* http://www.irs.gov/charities/article/0,,id=219545,00.html (last accessed September 2, 2011).

In *Matter of Bronx Municipal Hospital*, 12 I&N Dec. 768 (Reg. Comm'r 1968), the Regional Commissioner held that an offer of medical residency "is not primarily an offer of training within the meaning of section 101(a)(15)(H)(iii) of the Act, but on the contrary is essentially an offer of productive employment which ordinarily would be performed by a person living in the United States."

Further, in 1995, the legacy Immigration and Naturalization Service (hereinafter "the Service") issued a final rule that confirmed the eligibility of medical residents for H-1B status by recognizing the employment nature of medical residency programs. *See* 60 Fed. Reg. 62021-23 (Dec. 4, 1995). The preamble to the final rule notes that the Service removed a provision in the proposed rule that would have prohibited medical residents from qualifying for H-1B classification. In describing the reversal of the Service's position, the preamble to the final regulation states:

> In proposing this rule, the Service expressed its opinion that Congress did not intend the H-1B nonimmigrant classification to be used by graduates of foreign medical schools coming to the United States to pursue medical residencies or otherwise receive graduate medical education or training, and that, therefore, these aliens should seek classification as J-1 nonimmigrant aliens. This opinion was based on the Service's examination of the relevant legislation, including the Health Professionals Education Assistance Act of 1976 (HPEAA), Pub. L. 94-484 and MTINA. The Service took note that the HPEAA established the J-1 classification as the sole vehicle, with certain limited exceptions, for graduates of medical schools to obtain graduate medical education or training in the United States, including medical residencies.
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> After a careful review of the comments received in response to the proposed rule and a further review of the relevant legislative history, the Service has opted to withdraw this portion of the proposed rule.
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> The Service [will] continue its current practice of allowing graduates of foreign medical schools to take residencies under the H-1B classification. In so doing, the Service notes first that nothing in the statute or the relevant legislative history specifically precludes H-1B classification for aliens seeking graduate medical training, and second, under the language of section 214(i) of the Act, a graduate medical education program, such as a residency, could in some cases meet the definition of "specialty occupation" for H-1B purposes. See also 8 CFR 214.2(h)(4)(i). In addition, we note, as did some commenters, that a medical residency can reasonably be considered to be either a training program or a specialty occupation. This position is consistent with that taken by the Service in *Matter of Bronx Municipal Hospital Center*, 12 I&N Dec. 768 (1968), where the Regional Commissioner held that a medical residency is primarily clinical in nature and, therefore, does not qualify as an H-3 training program.

Therefore, a medical residency position involves a combination of education, training and employment. However, the issue in the instant case is not whether or not a medical resident engages in employment. Instead, at issue is whether or not an offer of employment as a medical resident can be the basis of an employment-based immigrant visa petition.

Section 101(a)(3) of the Act defines "alien" as "any person not a citizen or national of the United States." Section 101(a)(15) of the Act defines "immigrant" as "every alien except an alien who is within one of the following classes of nonimmigrant aliens."

Section 203(b) of the Act provides for the allocation of immigrant visas to employment-based immigrants. The regulation at 8 C.F.R. § 204.5(c) states that any "United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act."

In the instant case, the petitioner has requested classification of the beneficiary as a qualified immigrant who is a member of the professions holding an advanced degree pursuant to section 203(b)(2)(A) of the Act. Petitions for the requested classification must be accompanied by an offer of employment. *See* 8 C.F.R. § 204.5(k).

A lawful permanent resident is accorded the privilege of residing permanently in the United States. Section 101(a)(20) of the Act. It follows that the offered position underpinning an employment-based immigrant visa petition be for permanent employment.[14] Black's Law Dictionary 605 (9th Ed. 2009) defines "permanent employment" as "[w]ork that, under contract, is to continue indefinitely until either party wishes to terminate it for some legitimate reason."

Section 204(b) of the Act states:

> After an investigation of the facts in each case, and after consultation with the Secretary of Labor with respect to petitions to accord a status under section 203(b)(2) or 203(b)(3), the [Secretary of Homeland Security] shall, if [s]he

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[14] This requirement is mirrored in the DOL regulations and administrative case law. The permanent labor certification program supports the filing of visa petitions allowing immigrants to engage in "permanent" employment within the United States. 20 C.F.R. §§ 656.1(a); 656.10(c)(10). The regulations for permanent labor certifications at 20 C.F.R. § 656.3 define "employment" as "[p]ermanent, full-time work by an employee for an employer other than oneself." "The employer bears the burden of proving that a position is permanent and full-time. If the employer's own evidence does not show that a position is permanent and full-time, certification [by the DOL] may be denied." *In the Matter of Professional Staffing Services of America*, 2004-INA-00007 (BALCA March 7, 2005)(citing *Gerata Systems America, Inc.*, 88-INA-344 (BALCA Dec. 16, 1988)). Permanent employment is employment that continues indefinitely until a party wishes to terminate it. *In the Matter of Professional Staffing Services of America*, 2007-INA-00012 (BALCA June 5, 2008).

> determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is an immediate relative specified in section 201(b) or is eligible for preference under subsection (a) or (b) of section 203, approve the petition and forward one copy thereof to the Department of State. The Secretary of State shall then authorize the consular officer concerned to grant the preference status.

Therefore, if USCIS determines that the facts that were provided in the petition are not true (*e.g.*, that the job offered in the labor certification is not permanent), then USCIS will not approve the petition.

In *Matter of M-S-H-*, 8 I&N Dec. 460 (Reg. Comm'r 1959), the Regional Commissioner held that a one-year medical intern position did not qualify for classification for nonimmigrant status under section 101(a)(15)(H)(i) of the Act because the petitioner had a *permanent need* for the services provided by medical interns. In the decision, the Regional Commissioner states:

> The petitioner's counsel states that "The situation of an intern is of necessity a temporary one since, after a period of internship, they are no longer interns but must graduate into the position of Residents following a program of residence." *This is unquestionably true* insofar as a particular intern is concerned. However, when an intern completes his internship and moves into a residency or private practice, the work he did as an intern must still be done by someone. In this sense the position is of a permanent rather than a temporary nature.

Id. at 461. (Emphasis added).

At the time of the Regional Commissioner's decision, in order to obtain H-1B classification, both the offer of employment and the employer's need for the labor had to be temporary. Although this is no longer the case for H-1B classification, it remains true for H-2A and H-2B classification. Specifically, for H-2A classification, the regulation at 8 C.F.R. § 214.2(h)(5) states:

> (iv) *Temporary and seasonal employment*
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> > (A) *Eligibility requirements*. An H-2A petitioner must establish that the employment proposed in the certification is of a temporary or seasonal nature. Employment is of a seasonal nature where it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations. Employment is of a temporary nature where the employer's need to fill the position with a temporary worker will, except in extra ordinary circumstances, last no longer than one year.

For H-2B classification, the regulation at 8 C.F.R. § 214.2(h)(ii) states:

> (B) *Nature of petitioner's need.* Employment is of a temporary nature when the employer needs a worker for a limited period of time. *The employer must establish that the need for the employee will end in the near, definable future.* Generally, that period of time will be limited to one year or less, but in the case of a one-time event could last up to 3 years. The petitioner's need for the services or labor shall be a one-time occurrence, a seasonal need, a peak load need, or an intermittent need.

(Emphasis added).

The Regional Commissioner in *Matter of M-S-H-* concludes that the *petitioner's need* for the labor performed by medical interns is permanent, thus disqualifying the position for the requested nonimmigrant visa. Again, this is because the law at that time required both the job offer and the employer's need for the labor to be temporary. The Regional Commissioner does not address whether, in the employment-based immigrant visa petition context, a medical resident position can constitute a permanent offer of employment. This is a crucial distinction. The fact that an employer's need is permanent does not mean that the offered position is permanent. It does not follow that an offered position is permanent in the context of an employment-based immigrant visa petition just because the petitioner's need for the services is permanent. If that were the case, then it would be theoretically possible for a one week offer of employment to serve as the basis of an employment-based immigrant visa. This would be an absurd result.

Instead, in the employment-based immigrant visa context, both the offered position and the petitioner's need for the labor must be permanent.[15]

As is explained above, medical residents are potentially eligible for two nonimmigrant classifications: H-1B and J-1. Although USCIS has followed a policy of permitting "dual intent" in

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[15] Regarding the requirement that the employer's need be permanent in the immigrant visa petition context, the regulations for skilled workers and other workers specify that the offered employment cannot be temporary or seasonal. Although the regulations for the requested employment-based category at 8 C.F.R. 204.5(k)(2) do not contain a similar provision, this does not mean that a temporary or seasonal offer of employment can be the basis of a second preference employment-based immigrant petition. For example, page 48 of the 1990 U.S.C.C.A.N 6710 House Report 1001-723, for the Family Unity and Employment Opportunity Immigration Act of 1990 [IMMACT 90], P.L. 101-649 states:

> All other aliens for whom employers seek immigrant visas must be entering for the purpose of meeting a shortage of employable and willing U.S. workers in specified labor that is not temporary or seasonal in nature.

Therefore, in the instant case, the employer's need for the labor cannot be temporary or seasonal in nature.

the H-1B classification, J-1 status cannot be granted to an intending immigrant. The fact that medical residents are eligible for J-1 classification is predicated on the fact that a medical residency is a temporary position and not permanent.

It is acknowledged that the petitioner has a permanent need for the services provided by medical residents. However, this is not sufficient to establish that the offered position constitutes permanent employment, which is necessary for the approval of an employment-based immigrant visa petition.

In summary, the petitioner is sponsoring the beneficiary for lawful permanent residence based on an offer of permanent employment. A lawful permanent resident is accorded the privilege of residing permanently in the United States. Medical residency is a combination of employment and graduate medical education. The position offered to the beneficiary is limited to a specific, finite and short period of time without the possibility of extension. Therefore, the offered position does not constitute an offer of permanent employment.

In addition, during the adjudication of the appeal, the AAO determined that it did not appear that the petitioner still intended to employ the beneficiary in the offered position. The evidence in the record indicates that the job offered to the beneficiary had a start date of July 1, 2007 and an end date of June 30, 2009.

The beneficiary entered into a two-year endocrinology fellowship at the State University of New York, Buffalo School of Medicine and Biomedical Sciences following the completion of his internal medicine residency.[16] Furthermore, the beneficiary appears to have completed his board certification in internal medicine.[17] According to USCIS records, the beneficiary has been sponsored for H-1B employment by another employer in Florida.

Therefore, it did not appear that the petitioner currently intends to employ the beneficiary in the position of "Senior Medical Resident." In order for the petition to be approved, the petitioner must maintain a continuing intent to permanently employ the beneficiary in the offered position. Where no legitimate job offer exists for the offered position, the request that a foreign worker be allowed to fill the offered position has become moot, and the petition must be denied.

Accordingly, on February 18, 2011, the AAO issued a Notice of Derogatory Information, Request for Evidence and Notice of Intent to Deny (hereinafter, "NOID"). The NOID states that, if the petitioner still intended to permanently employ the beneficiary as a "Senior Medical Resident," it must provide an affidavit of an officer of the hospital confirming that this is the case. The NOID also asked the petitioner to explain how it is possible for an individual who has already completed an

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[16] http://medicine.buffalo.edu/news_and_events/current_researchnews.host.html/content/shared/smbs/news/2010/04/agent_orange.detail.html (last accessed September 2, 2011); *see also* http://diabetes-endocrinologycenterofwny.com/staff.html (last accessed September 2, 2011).

[17] http://www.abim.org/services/verify-a-physician.aspx (last accessed September 2, 2011).

internal medicine residency and is board certified in internal medicine can serve as a "Senior Medical Resident."

The NOID also requested an affidavit from the beneficiary confirming his intent to be permanently employed in the position of "Senior Medical Resident" by the petitioner upon the issuance of his lawful permanent residence.

Finally, the NOID informed the petitioner that the AAO intended to dismiss its appeal because the offered position of "Senior Medical Resident" does not constitute an offer of permanent employment.

Counsel responded to the NOID in a letter dated March 14, 2011. The letter states that "the Petitioner no longer intends to employ the Beneficiary in the previously offered position." The letter further states "given such changed intentions, the Petitioner is not submitting additional evidence and respectfully requests that the instant appeal be dismissed." Counsel did not request that the appeal be withdrawn.

Therefore, for the reasons set forth above, director's decision denying the petition is withdrawn. However, the appeal is dismissed because the petitioner no longer intends to employ the beneficiary, and because the offered position does not constitute permanent employment.

The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

A petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043; *see also Soltane v. DOJ*, 381 F.3d at 145.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States,* 229 F. Supp. 2d at 1043.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.